

VZCZCXYZ0012  
RR RUEHWEB

DE RUEHC #9419 0852154  
ZNR UUUUU ZZH  
R 262136Z MAR 09  
FM SECSTATE WASHDC  
TO RUEHTA/AMEMBASSY ASTANA 0000  
RUEHMO/AMEMBASSY MOSCOW 0000

UNCLAS STATE 029419

SIPDIS

E.O. 12958: N/A

TAGS: KZ RS

SUBJECT: BAIKONUR TSA: STEPS TOWARD ENTRY INTO FORCE

REF: 07 MOSCOW 5035 AND PREVIOUS

1 . Since its date of signature, January 26, 1999, the U.S., Russia, and Kazakhstan have applied provisionally a Technology Safeguards Agreement (TSA) for space launches from the Baikonur Cosmodrome. The TSA provides essential safeguards for technical information of Russian and U.S. licensed spacecraft and components from the Baikonur Cosmodrome. Provisional application is ensured by Article XII of the Agreement. At the five-year anniversary of signature in January 2006, the U.S. provided a note to the Russian Federation, proposing provisional application for another five years. The note reminded Kazakhstan that although the agreement was signed in English and Russian, and those texts were in conformity at the time of signature, a Kazakh-language text was to have been provided subsequent to the signing.

The U.S. prefers not to rely on provisional status and Russia has indicated (reftel) that it also seeks entry into force, as such status would prevent possible access limitations, customs inspections or seizures, VAT liabilities or duties on launch-associated cargo shipments, and launch schedule uncertainties.

THE KAZAKH-LANGUAGE TEXT

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¶2. Kazakhstan provided a Kazakh-language text of the agreement in January 2006. The U.S. reviewed that text and found discrepancies that would preclude a successful comparison of the English and Kazakh texts as being in conformity and equally authentic. Changes were proposed to the Kazakhstani MFA in December 2007 and accepted in April ¶2008. The Kazakhstani side presented an updated text that has been compared with the English text; these texts are now certified to be in conformity and equally authentic.

RUSSIAN TEXT STATUS

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¶3. Russia ratified the Baikonur TSA on December 29, 2000 and informed the U.S. that the Russian Government had completed its relevant domestic procedures on March 25, 2004. In mid-2006, Russia also indicated that it had compared the original 1999 Russian and 2006 Kazakh-language text and found them to be in conformity.

CROSSOVER-THE TEXTS, CONTINUED

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¶4. According to U.S. legal/treaty experts and based upon accepted international practice, the Russian Federation will now need to compare the updated 2008 Kazakh text with the Russian text again in order to ascertain that it continues to consider the Russian and Kazakh texts to be in substantive conformity; there have been changes to the 2006 Kazakh text, as noted. If that Russian/Kazakh conformity process results in any additional changes to the Kazakh-language text, the revised Kazakh text will need to be reviewed by the U.S. again. When all three texts have been found to be in

substantive conformity, the Republic of Kazakhstan should present the clean, final text under cover of a diplomatic note to both the United States and the Russian Federation. The United States and the Russian Federation should then send a diplomatic note back to the Republic of Kazakhstan confirming that the Kazakh and English texts (in the case of the Russians, the Kazakh and Russian texts) have been compared and are found to be in conformity and that the Kazakh-language text is an authentic text for the agreement.

Upon successful completion of this round of note exchanges, it would be appropriate for Kazakhstani officials to send the Agreement, in all three equally authentic language versions, to its legislative body for review/ratification to fulfill domestic procedures and requirements.

ENTRY INTO FORCE, THE FINAL ROUND

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¶15. Article XII, paragraph 1 of the Agreement provides for entry into force upon exchange of notification among the Parties confirming that all relevant domestic procedures and requirements necessary for the Agreement's entry into force have been fulfilled. The Russian Federation, as noted above, informed the U.S. that it has done so. If the Russian Federation has not so informed the Republic of Kazakhstan, it should do so. Upon completion by Kazakhstan of its internal procedures, it should inform both the U.S. and Russia by diplomatic note, stating in each of those notes that a similar note is being sent to the other government. Upon receipt of this notification, the United States will inform both Kazakhstan and Russia that the United States has completed its internal process, and refer to the corresponding notes received from both Kazakhstan and Russia, and provide the definitive date of entry into force of the Agreement (i.e., the date of the U.S. note. As this time approaches, more guidance and a draft note will be forthcoming.

¶16. Actions for Embassy Astana: First, Post is requested to engage with appropriate host government officials and inform them that the April 2008 text is in conformity with the English text. Drawing on background above with regard to the need to allow the Russian side to review the updated text, Post should explain the process toward entry into force. If the Russian side has changes to the updated Kazakh text, the GOK should inform Post and obtain that text for Washington's review. If the Russian side accepts the updated text as authentic, the GOK should present the new, clean, final text to both the Russian Federation and the United States under cover of a diplomatic note. Then Post should continue to outline the subsequent steps toward entry into force, drawing on paragraphs 3-5 above.

¶17. Actions for Embassy Moscow: Post is requested to verify that Russia passed its entry-into-force note to Kazakhstan as well as to the United States in 2004. Then Post is requested to outline the steps toward entry into force for Kazakhstan and the United States, noting that after the Republic of Kazakhstan has notified us both of completion of its internal procedures, the United States will send both Russia and Kazakhstan its note, referring to the Russian note of 2004 and the Kazakhstani note. If the issue of the draft Technology Safeguards Agreement is raised upon presentation of the Baikonur TSA, please query MFA as to when the U.S. can expect a written response to the suggested changes that the U.S. proposed to the text in June, 2008.

¶18. Support of Posts in this process is much appreciated.  
CLINTON